

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN MARTINI,

Plaintiff,

-against-

05 Civ. 9881 (RJS) (JCF)

CITY OF NEW YORK, et al.,

Defendants.

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DECLARATION OF SCOTT A. KORENBAUM IN SUPPORT OF
PLAINTIFF'S OBJECTIONS, PURSUANT TO FED. R. CIV.
PROC. 72, TO MAGISTRATE JUDGE FRANCIS' MARCH 19,
2008, ORDER DISMISSING PLAINTIFF'S CLAIMS FOR
EMOTIONAL DISTRESS DAMAGES

SCOTT A. KORENBAUM declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, as follows:

1. I represent plaintiff John Martini. I submit this declaration in support of his objections, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, to the March 19, 2008 Order of Magistrate Judge Francis (the "Order"). In the Order, Magistrate Judge Francis granted defendants' motion to dismiss Mr. Martini's claim for emotional distress damages. A copy of the Order is annexed hereto as Exhibit A.

2. Mr. Martini recognizes that the Order is consistent with prior Orders entered in other RNC actions. He is filing his objections, however, for two reasons. First, as Mr. Martini argued before Magistrate Judge Francis and as discussed in the accompanying memorandum of law, he believes that such prior Orders are wrong as a matter of law. As such, he files these objections to preserve his right to pursue an appeal to the United States Court of Appeals if such a course of action becomes necessary.

3. Second, Mr. Martini believes that in opposing the defendants' motion to dismiss his claim for emotional distress damages, he demonstrated that the circumstances of his particular situation warranted different treatment in his case.

4. Finally, the moving and opposition papers submitted to Magistrate Judge Francis contained discovery materials (e.g., deposition testimony and interrogatory responses) that discussed issues concerning Mr. Martini's mental health. I am not attaching the parties' motion papers to this declaration, which are being filed electronically, because if I did so the public would be able to gain access to such information, which is otherwise privileged. I submit this is appropriate, however, because this Court reviews the Order de novo.

5. For the reasons stated in the accompanying memorandum of law, Mr. Martini submits that the Court should overrule the Order and permit Mr. Martini to pursue his claims of emotional distress damages.

Dated: New York, New York
May 6, 2008

/s
SCOTT A. KORENBAUM